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C O N F I D E N T I A L SECTION 01 OF 02 NAIROBI 004080

SIPDIS

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TAGS: [PGOV](#) [PREL](#) [PHUM](#) [PINS](#) [KDEM](#) [KE](#)

SUBJECT: DIPLOMATS SPEAK OUT ON REFERENDUM PROCESS -- AND
RUFFLE GOVERNMENT FEATHERS

REF: A. (A) NAIROBI 3988

[B](#). (B) NAIROBI 3982

Classified By: Political Counselor Michael J. Fitzpatrick; Reasons: 1.4
(b,d)

[1](#). (U) SUMMARY: Ambassador joined several other chiefs of mission in a September 28 meeting with Electoral Commission of Kenya (ECK) Chairman to discuss the ECK,s efforts (and difficulties) to supervise November's referendum on the new draft constitution. Following the meeting, the envoys released a press statement condemning the recent violence surrounding the referendum campaigns and encouraging both sides to ensure a free and fair referendum. The statement -- signed onto by 26 resident diplomatic missions -- surprisingly elicited a negative response from the Ministry of Foreign Affairs, which implied that the envoys had exhibited partisanship in the constitutional debate. END SUMMARY.

Welcomed Support for a Beleaguered ECK

[2](#). (C) A half-dozen diplomatic envoys -- Ambassador Bellamy plus Ambassadors or Charges from Switzerland, Canada, Denmark, UK, and Norway -- met with besieged ECK Chairman Samuel Kivuitu September 28. The purpose: to lend support to the ECK and its mission to conduct voter education and to oversee the planned November 21 referendum on the proposed new constitution. Kivuitu has come under increasing pressure, with some politicians even calling for his resignation, after he admonished both sides in the constitutional debate for their campaigning activities in violation of the timetable for the referendum established by the ECK. Kivuitu has also sharply and publicly criticized Justice Minister Kiraitu Murungi,s directive to civil servants to support the new constitution and his announcement that government resources could and would be used to fund the "Yes" campaign (ref A).

[3](#). (C) The meeting served to re-affirm the work of the ECK and emphasized the international community,s desire for a transparent, free, and non-violent referendum process. During the meeting, Kivuitu described the "Yes" and "No" camps as amorphous and pointed to a lack of identifiable interlocutors for both campaigns as complicating the ECK,s ability to oversee the referendum. The Referendum Code of Conduct requires both sides to establish national and constituency level referendum committees to work with the ECK. These committees will help ensure that the campaign is conducted in an orderly and transparent manner, but neither side has yet produced the necessary teams.

[4](#). (C) Kivuitu again expressed concern that the referendum campaigning had begun before civic education started. Kivuitu also emphasized the need to swiftly establish peace committees to mitigate the threat of violence. He lamented the lack of power of the ECK to punish violations of various election laws. The Attorney General, police, and internal security services should be enforcing the Election Offences Act and Electoral Law, but enforcement thus far has been lax and/or inconsistent. Kivuitu thought it vital that the ECK, the AG, police, and "Yes" and "No" committees meet to establish coordination mechanisms. The Government, in response to such appeals, has been sending only low-level officials.

[5](#). (C) Kivuitu shared a press statement he issued September 23, in which he cited the Constitution of Kenya Review (Amendment) Act of 2004 to support his interpretation that the draft constitution could not, by law, be a government project. He also told the assembled envoys in the meeting that use of government employees in the campaign would violate the Public Officers Ethics Act.

[6](#). (C) Kivuitu is concerned that the Government may intend simply to push the new constitution through by any means, regardless of law, regulations, or past precedents. He expressed his appreciation for the international community's support and interest in the referendum process, noting that such support had been vital to the success of the 2002 elections (which he also oversaw). He announced that the

envoys, show of support "gives me courage to continue" and urged the envoys to pressure the Government to adhere to the electoral standards.

The International Community Speaks Out

17. (U) Following the meeting with Kivuitu, the envoys (minus Kivuitu) were joined by a number of other donor nation representatives to release a statement at a specially convened press conference at a downtown hotel (full text of statement at para 9 below). The statement emphasized the international community's neutral stance on the content of the constitution, condemned violence and the inappropriate use of public resources for the referendum campaigns, and emphasized the importance of a free and fair referendum. Copies of the statement were sent to the Office of the President and the leader of the official opposition, along with a diplomatic note expressing the desire to meet with both sides to discuss the issue.

18. (U) On September 29, the Canadian High Commission received a rather stilted diplomatic note from the Ministry of Foreign Affairs admonishing the envoys and accusing them of circumventing international customary law by releasing a statement to the media rather than pursuing diplomatic channels. (NOTE: Despite repeated requests since August, the Government has yet to brief the diplomatic community on its YES campaign, END NOTE.) The note also asserted that the diplomatic community is "obliged to refrain from taking sides publicly on such a matter of national importance." The Canadian request to meet with President Kibaki to discuss the issues raised in the statement was summarily denied.

19. (U) Text of Press Statement issued September 28 in Nairobi (BEGIN TEXT):

We, the undersigned Heads of Mission based in Nairobi, wish to take this opportunity to clarify our position with regard to the Constitution Bill and forthcoming referendum. We have consistently stated that the content of the Constitution Bill is a matter solely for the people of Kenya. The international community's role has been to encourage a constitution that commands the support of the clear majority of the Kenyan people.

We condemn the violence witnessed to date. We expect a process that is informative, free, transparent and peaceful; that permits freedom of press and association, and respect for human rights; that is not marred by violence or its incitement, physical intimidation or financial manipulation.

We note that the Electoral Commission of Kenya has been mandated to oversee voter education and the referendum. We look to all political leaders and party executives to ensure party members and political supporters adhere to the Referendum Code of Conduct. We expect members of Government and Government officials to refrain from any inappropriate use of public resources for political purposes, in accordance with the Public Officers Ethics Act.

We will follow the process closely in the spirit of partnership that has characterised our support for Kenya.

(signed)
Canada, European Union members represented in Kenya (Austria, Belgium, Cyprus, the Czech Republic, Denmark, the European Commission Delegation, Finland, France, Germany, Greece, Hungary, Italy, the Netherlands, Poland, Portugal, Romania, Slovakia, Spain, Sweden, and the United Kingdom), Japan, Norway, Switzerland, Turkey, and the United States of America.
(END TEXT.)
BELLAMY